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# Supreme Court of the United States

October Term, 1934

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## No. 9

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THOMAS C. ROWLEY, Treasurer of Converse County, State of Wyoming; CHARLES M. HALL, Treasurer of Fremont County, State of Wyoming; ALTA PEARL MASSEE, Treasurer of Natrona County, State of Wyoming; and D. A. SHOOPMAN, Treasurer of Niobrara County, State of Wyoming,

*Petitioners,*

*vs.*

CHICAGO AND NORTHWESTERN RAILWAY COMPANY,

*Respondent.*

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## Supplement to Brief in Support of Petition for Writ of Certiorari

### RESPONDENT DID NOT EXHAUST ITS AVAILABLE ADMINISTRATIVE REMEDIES

Supplementing petitioners' brief filed in support of their petition for a writ of certiorari, Section 115-512, Wyoming Revised Statutes, 1931, which is set out and quoted in full at Pages 11 and 12 of the original brief, provides a way whereby respondent could have submitted to the District Court of either of the districts in Wyoming in which any portion of the taxable property was located, the question of valuation as fixed by the State Board of Equalization on July 14, 1931. (See § 11 of petitioners' answer, R. Page 15.) By appeal under this statute, respondent could have had the question of valuation determined anew and it was its duty to so exhaust all administrative channels of relief if aggrieved by the valuation fixed by the State Board of Equalization.

This statute was before the Wyoming Supreme Court in the case of Midwest Hotel Company vs. State Board of Equal-

ization, which is reported in 273 Pacific at Page 696, wherein the Supreme Court was asked to review the ruling of the trial court, declining to entertain an appeal by an aggrieved taxpayer from a decision of the State Board of Equalization. The trial court declined to take jurisdiction on the ground that it had no appellate jurisdiction of the subject matter.

Article V, Section 1, Constitution of the State of Wyoming:

> "The judicial power of the state shall be vested in the senate, sitting as a court of impeachment, in a supreme court, district courts, justices of the peace, courts of arbitration and such courts as the legislature may, by general law, establish for incorporated cities or incorporated towns."

Article V, Section 10, Constitution of the State of Wyoming:

> "The district court shall have original jurisdiction of all causes at law and in equity and in all criminal cases, of all matters of probate and insolvency and of such special cases and proceedings as are not otherwise provided for. The district court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, injunction and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective disdricts."

The Supreme Court sustained the judgment of the trial court, but on a different ground entirely and because the statute was held to be so defective as not to be capable of being put into effect. After the decision by the Supreme Court in the Midwest Hotel Co. case, supra, the Legislature amended the statute by adding the following provisions:

> "The party or parties appealing shall, within sixty days after the decision of the board, file in the district court to which the appeal is taken a petition setting out

the cause of complaint, and a copy of the records of the board all duly certified by the secretary of said board, and copies of said assessment or assessments.

"The party appealing shall at the time of filing such appeal enter into an undertaking to be approved by the clerk or judge of said district court, and to be given to the state of Wyoming in such an amount as the court or judge may fix, but in no case less than five hundred dollars ($500.00), and conditioned that the appellant shall prosecute the appeal without unnecessary delay, and for the payment of all costs, taxes, interest and penalties that may be ultimately levied on the property, the assessment of which is in controversy.

"The clerk of the court shall immediately upon filing of the appeal notify the secretary of the board under the seal of the court, and supply him with a copy of the petition.

"It shall be the duty of the attorney general and the county attorney of the county to which the appeal is taken to represent the board in proceedings on the appeal.

"All proceedings on appeal except as herein otherwise provided shall be under the provisions of the code of civil procedure, as in other civil cases." (See Ch. 73, Sec. 41, Session Laws of Wyoming, 1931.)

thereby supplying that which the Supreme Court held was necessary to make the statute operative.

A similar statute of Wyoming is found as Section 91-306, Wyoming Revised Statutes, 1931, which provides for appeals from the Board of Land Commissioners and is in the following language:

"Any party who may feel himself aggrieved by the decision of the board of land commissioners rendered in any contest proceeding held before said board, may have an appeal from such decision to the district court sitting within and for the county in which the land in controversy is situated. All persons joining in the appeal shall be joined as appellants, and all persons having interests adverse to the parties appealing, or any of them, shall be joined as appellees; and upon said appeal being perfected, said contest proceeding shall stand to be heard and for trial de novo, by said court."

Section 112-512, Wyoming Revised Statutes, 1931, is identical in purpose to Section 91-306, supra, and provides for an appeal from any assessment made by the State Board of Equalization to a district court, and this statute, Section 91-306, Wyoming Revised Statutes, 1931, was considered by the Wyoming Supreme Court in the case of Bucknum vs. Johnson, reported in 127 Pacific at Page 904, wherein the Supreme Court says:

> "The jurisdiction of the District Court on the appeal is to try the case de novo on the facts and its judgment is not one of affirmance, reversal or modification as upon review upon error, but is based upon its finding upon the evidence, and is not governed by the findings of the board; and the court is in a sense substituted for the board to determine the matter in issue upon the facts. The question to be determined by the court is the same as that which was presented to the board, * * *."

Under the statutes in question in the case at bar, the District Court has been charged by the Legislature, in addition to its judicial functions, with the duty of performing administrative functions with authority to determine the valuation of the respondent's property if and when the respondent desires to avail itself of the privilege of asking this administrative function to be performed in its behalf where it is not satisfied with the valuation determined by the State Board of Equalization, for whom, under the circumstances, the trial court is substituted. This hearing de novo is an integral part of the administrative procedure adopted by the Legislature as a method for levying and collecting taxes on railroad property.

Before respondent could resort to the jurisdiction of a federal court of equity to enjoin the collection of the taxes in question on any ground, it was its duty to exhaust every available administrative remedy afforded by the Statutes of Wyoming, including an appeal to the District Court as a tribunal directed to exercise administrative powers in valuing the respondent's taxable property in Wyoming. The respondent wholly failed and neglected to pursue this administrative remedy to its finality and, therefore, is now estopped from seeking relief in a federal court of equity.

Section 115-512, Wyoming Revised Statutes, 1931, embraces every element of adequate protection for one availing itself

of this remedy to have its property re-valued. The period of time within which an aggrieved party must act is within sixty days after the decision of the Board, which in the instant case was made on July 14th, 1931; and in order to prevent any further proceedings on behalf of administrative officers to collect the tax pending appeal, the statute authorized the posting of a bond and fixed the minimum amount thereof, which, when posted, would fully protect respondent until the disputed valuation was fixed and a levy on the property ultimately made.

The statute further provides that, except as therein otherwise provided, all proceedings on such an appeal shall be under the provisions of the Code of Civil Procedure as in other civil cases. Article 48, title, "Proceedings in Error," of the Wyoming Revised Statutes, 1931, Section 89-4803, defines the jurisdiction of the Supreme Court of the State of Wyoming:

> "A judgment rendered or final order made by the district court may be reversed in whole or in part, vacated or modified by the supreme court for errors appearing on the record. Where a judgment is reversed in part for error relating only to an issue which is in no way dependent for its proper trial on any other issue or issues found to have been properly tried, and a partial new trial may be had without prejudice or injustice to any of the parties concerned, the cause may be remanded for the trial of the issue alone upon which the error was committed."

and Section 89-4801 defines a final order from which an appeal to the Supreme Court may be prosecuted:

> "An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right, made in a special proceeding, or upon a summary application in an action, after judgment, is a final order which may be vacated, modified or reversed, as provided in this article."

This latter section specifically provides that an order affecting a substantial right made in a special proceeding shall be appealable. Respondent complains of the order of the State Board of Equalization fixing an assessment or valuation upon

its property, claiming that such order takes from it property in violation of its constitutional rights. The order of the District Court in fixing valuation would obviously be that of a special order, as such court is then sitting in an administrative capacity to perform a function enjoined upon it by the Legislature.

The Wyoming Supreme Court has given recognition to the fact that a remedy may be afforded by an appeal to the District Court from an order or action of an administrative body, and the legality of the bestowal of such administrative power on the district courts of Wyoming under the Constitution has been determined by the Supreme Court in the Bucknum vs. Johnson case, supra, as not offensive to the State Constitution separating the state government into judicial, executive and legislative branches. See Porter, State Auditor, etc., vs. Investors' Syndicate, 286 U. S. 461; and on rehearing, 287 U. S. 346.

## THE USE OF TRACK MILEAGE PERCENTAGE AS A VALUATION FACTOR

Respondent, in subdivision 2 of its brief, complains that the use by the State Board of Equalization of track mileage percentage as an allocating factor constituted a wholly wrong principle and method, and that the propriety of using traffic units and use of rolling stock as two factors was conceded to be correct. These statements are incorrect. Not until the respondent filed its brief in the United States Circuit Court of Appeals did it advance the contention that a wholly wrong principle and method was used by the State Board of Equalization in determining value, and to the contrary, the bill of complaint contains no allegation to that effect.

The grounds of respondent's complaint against the allocation of Wyoming valuation, as stated in Paragraph 12 of the Bill of Complaint, (R. Pages 3, 4) is that the factor percentage of miles of road operated was used arbitrarily and unlawfully because the State Board of Equalization failed and neglected to take into account the fact that the value of plaintiff's property in the State of Wyoming, measured by the number of miles of main line track, is less than one-half the value of its property located in states other than the State of Wyoming when so measured.

Traffic units and use of rolling stock were not conceded to

be proper factors. It is stated in Part II, Page 14, of respondent's brief that these factors were accepted. To the contrary, the State Board of Equalization contended they could not be correctly used in the manner proposed by respondent or as they were actually used by the trial court to determine value.

The use of the factors traffic units and rolling stock as they were actually used by the trial court, was unjustified. The Wyoming State Board of Equalization (R. Pages 108-109, 119-120) stated its objection to the use of these factors unless the track mileage factor, 3.29, was also used to offset the discrimination against Wyoming resulting from their use.

The holding of the court below that respondent's operative property in Wyoming was substantially and arbitrarily overvalued for taxation purposes for the year 1931, and the placing by the court below of a lesser value thereon than the value fixed by the Wyoming State Board of Equalization, are contrary to the law and facts in this case.

It is only where a valuation has been fraudulently made that it is subject to judicial review. See People ex rel. Town of Cicero v. Sweitzer, 170 N. E. 728, Page 734. The court below has no revisory power to prevent a valuation fixed arbitrarily by the State Board of Equalization in the absence of proof of fraudulent intent being the impelling motive in fixing such valuations. See Kentucky Railroad Tax Cases, 115 U. S. 321, Page 335, 29 L. Ed. 414. Fraud must be alleged and proved to justify interposition of courts of equity. See Taylor v. Secor, 92 U. S. 575, 23 L. Ed. 663; Bunten v. Rock Springs Grazing Association, Vol. 29 Wyo. Rep. 461, Page 479, Vol. 215 Pac. Rep. 244.

The use of an erroneous method of valuation by the State Board of Equalization does not authorize the interposition of a court of equity. The state officials are not required to follow any prescribed formula in determining property valuations for taxation. See Bunten v. Rock Springs Grazing Association, supra. The duty of the Board is to exercise an informal and honest judgment in fixing values for purposes of taxation. See Southern Railway Co. v. Watts, 260 U. S. 519, 527-528, 67 L. Ed. 388. The court below stated that the State Board of Equalization so performed its duty. See Judge's Memorandum of Nov. 9, 1932, R. Pages 42-43.

The court below proceeded to re-value respondent's property for 1931 taxation in Wyoming, stating (R. Page 43) that the State Board of Equalization had erroneously used

the mileage percentage factor. No other reason is assigned for the action of the court in lowering the property valuation of respondent. The court had no authority to substitute its judgment for that of the state officials, duly authorized to perform such duties, based alone upon the finding that the state officials used an erroneous method of determining value. See Minot v. Philadelphia Wilm. & Balt. R. R. Co., 85 U. S. 206, 21 L. Ed. 888, Page 896; The Erie Ry. Co. v. Commonwealth of Penn., 88 U. S. 492, 22 L. Ed. 595, Page 598.

There is not in the Record in the case at bar, a finding of fact or any evidence to the effect that the State Board of Equalization intentionally discriminated against respondent or its property in valuing the same for taxation for the year 1931. It is not sufficient that the State Board of Equalization acted arbitrarily or merely made a mistake. It is not enough that the court below reached a different conclusion as to value of respondent's operative property in Wyoming from the value fixed by the state officials for taxation purposes in the year 1931. To authorize the court to interfere with the value determined by the State Board of Equalization, there must be clear and affirmative showing that the difference is the result of intentional discrimination adopted and pursued as a practice by the State Board of Equalization. See Chicago Great Western R. Co. v. Kendall, 266 U. S. 94, 69 L. Ed. 183, Pages 188, 189.

In the above case, the court of three judges who heard the evidence submitted in support of the allegations of intentional discrimination by the state taxing tribunal, found against such contention, and that the alleged intentional discrimination did not exist, and denied the motion for injunction; and in the case at bar, the court below did not find that intentional discrimination existed or had been practiced, stating that there was no intentional and systematic under-valuation of property generally throughout the State of Wyoming, that there was no intentional omission from the tax rolls of a considerable amount of property. See R. Pages 42-43; See also, Court's 9th finding of fact, R. Page 45.

The appellants duly excepted to this finding for the reason that the same should have been positive and conclusive in form rather than to the effect that the evidence submitted by respondent is not sufficient. The failure to show the existence of these alleged conditions at a full hearing upon the merits

of the question at issue, is final and conclusive as between these litigants, unless, in a proper proceeding, the case be re-opened and further evidence received. And in the Judge's Memorandum, (R. Page 41) the court says:

> "* * * so far as the agricultural and grazing land valuations are concerned, they generally represent the true and full value of such properties. In other classes of property, there are isolated instances in some of the counties through which plaintiff's line passes, where there may have been valuations for assessment at less than the true value. * * *."

There was not a studied attempt on the part of the taxing officials to bring about a favorable result to one class of taxpayers over another. There is a fair showing that reasonable and honest effort was made to fairly and honestly tax property and to secure the return of all property for taxation which is legally taxable. The respondent is entitled to relief upon the basis of the erroneous inclusion of the track mileage percentage as a factor in determining the valuation of respondent's property in Wyoming, not because a wholly wrong principle and method was used by the State Board of Equalization in valuing respondent's property.

On this record, we submit the court below was without jurisdiction to substitute its judgment of valuation for that of the State Board of Equalization. See Sunday Lake Iron Co. v. Township of Wakefield, 247 U. S. 350, Pages 352, 353, 62 L. Ed. 1154; Pittsburg, etc., Ry. Co. v. Backus, 154 U. S. 421, 435, 38 L. Ed. 1031; Cumberland Coal Co. v. Board of Revision, U. S. S. Ct. A. Op. #3, Dec. 7, 1931, 76 L. Ed. 146; Vol. 3, Cooley on Taxation, Section 1144; Coulter v. Louisville & Nashville Ry. Co., 196 U. S. 599, 49 L. Ed. 615; Bunten v. Rock Springs Grazing Ass'n., supra.

## THERE WAS NO DISCRIMINATION OR LACK OF UNIFORMITY IN VALUING RESPONDENT'S WYOMING PROPERTY

Respondent complains of being the victim of intentional discrimination in the valuing of its property for taxation, which is to say there is a lack of uniformity in the valuing of property for taxation, and the Bill of Complaint (R. Pages 3 to 5, incl., §§ 12 to 14, incl.) states the alleged grounds for a claim of discrimination.

At Page 3 of respondent's brief in opposition to the application for a writ of certiorari, it now concedes all grounds of claimed discrimination, except over-valuation of its own property, to have failed of proof, and at Pages 79 and 80 of the Record, the chief witness for respondent, Mr. Balch, states he has no knowledge whatever of the actual value or the assessed value of other railroads in Wyoming, while Witness McWhinnie states (R. Pages 108-109, 114-115) that the valuation of respondent's property, taxed by the State Board of Equalization, was compared and equalized with like property of other railroads.

The respondent produced no evidence that its property was valued or assessed on a different or higher valuation than all other property of the same class within the State of Wyoming, and the Record establishes without contradiction that respondent's property was not valued on a different or higher basis than other property of the same class.

## CONCLUSION

The sole ground stated by the trial court, and affirmed by the Circuit Court of Appeals, for granting the respondent equitable relief is that the State Board of Equilzation of Wyoming erroneously used, as a factor in determining the valuation of respondent's property for taxation, the factor 3.29, representing the percentage of miles of respondent's main line track located within the State of Wyoming as compared to the entire main line track mileage. Both lower courts refer to the following authorities as sustaining such conclusion:

Pittsburg, C. C. & St. Louis Ry. Co. v. Backus, 154 U. S. 421, 431.

Fargo v. Hart, 193 U. S. 490, 499.

Union Tank Line Co. v. Wright, 249 U. S. 275, 282.

Wallace v. Hines, 253 U. S. 66, 69.

We submit that these authorities do not condemn, as unlawful, the method pursued by the Wyoming State Board of Equalization in determining the valuation of respondent's operative property for taxation in Wyoming for the year 1931. The case of Pittsburg, C. C. & St. Louis Ry. Co. v. Backus, supra, declares the validity of the Wyoming assessment; and as stated in each of the other three cases cited by the trial court, the tax condemned was based absolutely and alone upon

the relation of track mileage within the taxing state to that of the entire system, and the value determined accordingly.

The Wyoming State Board of Equalization did not employ such method of valuation. The Record does not permit such a conclusion, and the evidence fails to establish such an attempt to determine value. The court stated the taxing officials acted honestly; that no purpose was disclosed to favor one class of taxpayers over any other class; that no intentional discrimination was shown.

Hence, we respectfully submit that the Federal Court did not have equitable jurisdiction; that the ruling of the trial court is contrary to the law as pronounced by the United States Supreme Court and is contrary to the uncontradicted evidence; that the decree of the Circuit Court of Appeals, affirming the decision of the trial court, should be reversed; that respondent's bill of complaint should be ordered dismissed, and petitioners be awarded their costs herein.

Respectfully submitted,

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